



Billing Code:

SMALL BUSINESS ADMINISTRATION

13 CFR Part 134

RIN 3245-AH01

Regulatory Reform Initiative: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

AGENCY: U. S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: With this deregulatory action, the U. S. Small Business Administration (SBA) is revising regulations regarding rules of procedure governing cases before the office of hearings and appeals to remove an unnecessary regulatory provision and to clarify an existing rule of procedure.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN: 3245-AH01, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail or Hand Delivery/Courier: Ashley Cloud, Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI), as defined in the User Notice at

<http://www.regulations.gov>, please submit the information to Ashley Cloud, Office of Hearings and Appeals, 409 Third Street SW, Washington, DC 20416, or send an email to OHA@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator, Office of Hearings and Appeals, (202) 401-8200 or delorice.ford@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Part 134, Rules of Procedure Governing Cases Before the Office of Hearings and Appeals

SBA is proposing to remove § 134.317 from its regulations because the procedure addressed in this regulation, the return of size appeal case files, is no longer necessary. Case files are now transmitted electronically to the Office of Hearings and Appeals (OHA) from SBA's Area Offices, which eliminates the need to return paper records by mail. SBA is also revising § 134.714 to clarify that the decision of a Judge regarding a status protest appeal from a Women-Owned Small Business (WOSB) or Economically Disadvantaged Women-Owned Small Business (EDWOSB) is SBA's final agency decision and becomes effective upon issuance.

B. Executive Order 13771

On January 30, 2017, President Trump signed Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, which, among other objectives, is intended

to ensure that an agency's regulatory costs are prudently managed and controlled so as to minimize the compliance burden imposed on the public. For every new regulation an agency proposes to implement, unless prohibited by law, this Executive Order requires the agency to (i) identify at least two existing regulations that the agency can cancel; and (ii) use the cost savings from the cancelled regulations to offset the cost of the new regulation.

C. Executive Order 13777

On February 24, 2017, the President issued Executive Order 13777, Enforcing the Regulatory Reform Agenda, which further emphasized the goal of the Administration to alleviate the regulatory burdens placed on the public. Under Executive Order 13777, agencies must evaluate their existing regulations to determine which ones should be repealed, replaced, or modified. In doing so, agencies should focus on identifying regulations that, among other things: eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or are associated with Executive Orders or other Presidential directives that have been rescinded or substantially modified.

II. Section by Section Analysis

A. § 134.317 Return of the case file.

SBA is proposing to remove § 134.317 of its regulations, which currently states that upon issuance of a decision, OHA will return the case file to the transmitting Area Office. When a size appeal is filed, SBA's Area Office will often mail the original paper protest file to OHA for review. Pursuant to § 134.317, OHA will then send the original

file back to the Area Office at the conclusion of the appeal process. For several years, however, OHA has transitioned many of its processes to electronic transmission and storage. OHA will now transition this part of the size appeal process to a completely electronic method. Therefore, neither the Area Offices nor OHA will need to mail the paper protest file back and forth. As such, this regulation is no longer necessary.

B. § 134.714 When must the Judge issue his or her decision?

SBA is proposing to add language to § 134.714 of its regulations to clarify that decisions issued by OHA pursuant to WOSB or EDWOSB status protest appeals are considered final agency decisions. Currently, the rule is silent on the issue, which could lead to confusion since other size and status appeal regulations in part 134 clearly state that the OHA decision is a final agency decision. *See* §134.316(d) (size appeals), § 134.409(a) (8(a) appeals), and § 134.515(a) (Service-Disabled Veteran-Owned Small Business Concern status protest appeals). SBA does not follow a different process for women-owned businesses. For example, OHA's WOSB/EDWOSB appeal decisions currently state that the decision is the final agency decision. As such, SBA believes that the proposed revision for § 134.714 will clarify that the Judge's decision in a WOSB or EDWOSB status protest appeal is the final agency decision and that the decision becomes effective upon issuance.

III. Compliance with Executive Orders 12866, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612)

A. Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and is not a major rule under the Congressional Review Act, 5 U.S.C. 801, et seq.

B. Executive Order 13771

This proposed rule is expected to be an Executive Order deregulatory action with an annualized net savings of \$28,733 and a net present value of \$410,478, both in 2016 dollars.

This rule proposes to remove § 134.317, Return of the case file, because it is no longer necessary. Case files will now be transmitted electronically to OHA from the Area Office, eliminating the need to return paper records by mail. This rule will eliminate significant costs related to packing, labeling, and shipping case files from the transmitting Area Office and returning those files by mail. OHA receives and returns approximately 120 case files per fiscal year to the Area Offices, for a total of 240 shipments. Assuming it takes 45 minutes to prepare the shipment, printing, and mailing the files and that a GS-13 analyst performs this work at a wage of \$112,393 plus 30 percent for benefits, or \$146,111 (\$73 hourly), this would save the government \$13,140, annually. The cost of each shipment is approximately \$70, which would save the government an additional \$16,800 for a total savings of \$29,940 per year, in current dollars.

C. Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

D. Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The SBA has determined that this final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. If not, the RFA permits agencies to certify to that effect. SBA believes that the removal of §134.317 will only impact itself and that it will save SBA the costs associated with mailing paper files back and forth during the appeal process. SBA therefore certifies that this rule has “no significant impact upon a substantial number of small entities” within the meaning of the RFA.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Claims, Equal employment opportunity, Lawyers, Organizations and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR part 134 as follows:

**PART 134 – RULES OF PROCEDURE GOVERNING CASES BEFORE THE
OFFICE OF HEARINGS AND APPEALS**

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 634(i), 637(a), 648(l), 656(i), and 687(c); 38 U.S.C. 8127(f); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart J issued under 38 U.S.C. 8127(f)(8)(B).

Subpart K issued under 38 U.S.C. 8127(f)(8)(A).

Source: 61 FR 2683, Jan. 29, 1996, unless otherwise noted.

§ 134.317 [Removed and Reserved]

2. Remove and reserve § 134.317.

3. Amend § 134.714 by adding a sentence at the end of the section to read as follows:

§ 134.714 When must the Judge issue his or her decision?

* * * The Judge's decision is the final agency decision and becomes effective upon issuance.

Jovita Carranza,
Administrator.

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